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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

THE JOINT APPLICATION OF ORCHARD GRASS UTILITIES INC
AND OLDHAM COUNTY SANITATION DISTRICT FOR
APPROVAL OF THE TRANSFER OF WASTE WATER
TREATMENT FACILITIES PURSUANT TO STOCK PURCHASE
AGREEMENT BETWEEN THE PARTIES

Case No. 2004-00029

**RESPONSE OF OCSD TO
INITIAL DATA REQUEST OF ROBERT L. MADISON**

Data Request No. 1. Are the sewage plants being transferred because of obsolescence?

ANSWER: No.

If no, for what period of time does OCSD plan to keep processing sewage at the current plants?

B. If yes, assuming the PSC approves the JA as proposed, how long does OCSD plan to keep the Orchard Grass and the Willow Creek plants in operation?

ANSWER: Willow Creek will be eliminated as soon as possible, estimated within 12 months of acquisition. Orchard Grass will remain in operation until eliminated by connection to a regional treatment facility.

1. What are the plans of OCSD to replace the plants with new treatment facilities?

Describe the answer in detail.

ANSWER: None.

2. What is the name, address and location of any new treatment facility to replace the plants?

ANSWER: N/A.

3. How far away from each current plant is the new facility?

ANSWER: N/A.

4. In what county is the new facility located? **Answer:** N/A.
5. What is the estimated cost of sewage treatment at the new facility ?

Per year?

ANSWER: N/A.

B. Per 1,000 gallons processed?

ANSWER: N/A.

Data Request No. 2: Provide the estimated capital costs for any upgrades or improvements of any new treatment facility for each calendar year of 2004, 2005, 2006, 2007 and 2008. If data is not available for calendar year, but for fiscal year of some other timeframe, provide the timeframe and the cost for each fiscal year.

ANSWER: N/A.

Data Request No. 3: (Reference Madison enclosure 2, Rick Rash Oldham Era Letter to the Editor for Data Requests 8-11.)

ANSWER: The Rash letter was not attached as an enclosure to the Data Request.

A. Provide the budgetary details for the determination of the 1.4 million dollar revenue requirement for the OCSD. Break it down for the next 5 calendar years (or fiscal) as to capital costs, personnel, fees, etc.

ANSWER: Without reference to the Rash letter, OCSD's budget for the Fiscal Year

| | | |
|----------------------|-------------------------|----------------|
| ending 6/30/2004 is: | Operation & Maintenance | \$510,677 |
| | Administration | 377,172 |
| | Debt Service | 221,500 |
| | Depreciation | <u>150,000</u> |
| | Total Expense | \$1,259,349 |

B. What is the number of residential customers used to determine the revenue requirement of 1.4 million dollars?

ANSWER: Without reference to the Rash letter, OCSD has 3942 customers.

C. What is the average water usage in thousand gallons for a Oldham County residential customer per month? Give the answer to the thousandth. For example 4.56 thousand.

ANSWER: 6.60 thousand gallons per month.

D. Is it true that for the average amount of water used, the cost for a residential customer would be approximately the same for each of the three formulas referenced in the Rash letter?

ANSWER: See answer next below.

1. Provide the monthly sewage charge for an Oldham county sewage customer using the average amount of water per month under each of the three formulas in the Rash letter. Calculate the cost out to the cent, for example \$4.23 per month.

ANSWER: We do not know what the Rash letter contained. Based upon the three OCSD proposed rate alternatives, the rates would have been approximately \$28.88, \$28.79, and \$28.95.

E. If you add in the number of Willow Creek and Orchard Grass residential sewage customers:

1. What would be the revenue requirement?

ANSWER: Approximately \$1,617,000 (estimate only).

2. What would be the average gallons of water per customer per month?

ANSWER: Approximately 6,270 gallons monthly (estimate only).

3. What would be the formula that would be applied at that point? What would be the fixed rate per month? What would be the rate per 1,000 gallons used?

ANSWER: Current OCSD rates would apply to all residential customers, i.e., a fixed rate of \$7.67 plus \$3.20 per 1000 gallons of water used.

F. Assuming that the PSC approves the JA as proposed, how long after approval would the new rates for sewage go into effect for Orchard Grass and Willow Creek?

ANSWER: New OCSD rates became effective February 11, 2004.

G. In Rash's letter he states that after the acquisition of Orchard Grass and Willow Creek the OCSD will recommend a sewage rate of \$7 a month fixed cost and \$3 per 1,000 gallons.

1. Would the OCSD be willing to commit to this rate being applied to Willow

Creek and Orchard Grass residential customers immediately after PSC approval and for a period of three years as a condition of PSC approval of the transfer? Explain your response in detail.

ANSWER: OCSD is required by statute to charge a uniform rate to all customers across the county.

H. How many current residential customers does the OCSD have?

ANSWER: 3942

For all the answers to question 3 provide work papers and calculations.

Data Request No. 4. Reference KRS 278.020(4) and JA Page 4, Item 5 which states: OCSD has the requisite financial, technical and managerial abilities to provide reasonable service to the wastewater customers of Orchard Grass:

A. Is the OCSD currently losing \$25,000 - \$30,000 per month?

1. If yes, how does this demonstrate the requisite financial abilities? Explain in detail.

ANSWER: OCSD's FY 2004 Budget shows a projected Net Income of \$28,431, including depreciation. OCSD has incurred expenses due to cost of acquisition, plant remediation, and various service rates, some of which have been offset by connection fees. The adoption of a uniform county-wide rate schedule will assure adequate revenue for operations, maintenance, and expansion of service to the residents of Oldham County.

2. Provide for the past calendar year the dollar amount of surplus or deficit for each month of the OCSD?

ANSWER: Copies of audited financial statements are attached to the Joint Application.

B. Explain in detail how raising the costs for sewage treatment for an average Willow Creek residential customer by 54.78% results in a reasonable rate.

ANSWER: The estimated increase for Willow Creek customers is actually 31.76%. (See answer to Data Request No. 32 herein.) Willow Creek customers will pay the same rate as all

other OCSD residential customers, a rate which is comparable to sewer rates for similar areas in Kentucky.

C. Provide the names, titles, annual salaries and resumes of other employees of the OCSD (Board).

ANSWER: Forrest B. Ewen, President, is an architect licensed in the Commonwealth of Kentucky. Tom E. Davis, Treasurer, is an accountant with 23 years experience in corporate financial operation and control. John B. Malueg, PE, Secretary, is a Professional Engineer with training in civil, environmental and water biology, and a Kentucky Wastewater Class III certified operator.. The directors receive only their statutory allowance per KRS 220.170.

D. Provide the names, titles and annual salaries of employees of the OCSD.

ANSWER: Objection. Relevant information for technical staff has been previously provided to the PSC staff.

E. Provide the currently monthly charge for a residential customer of Orchard Grass.

ANSWER: \$15.59 per month

Data Request No. 5. Who has the responsibility to set the sewage rates in Oldham County, the OCSD or Fiscal Court? Does the OCSD just make recommendations or have authority to set the rates themselves?

ANSWER: OCSD has the statutory authority to establish rates, subject to Fiscal Court review and action pursuant to KRS 220.035.

Data Request No. 6. What are the names and estimated annual costs of each of the companies that will or are providing the improvements to or management of the sewage treatment facilities in Oldham County?

ANSWER: None.

Data Request No. 7. What was or will be the implementation date of the new rates, list the name, fixed monthly cost or formula and number of residential customers for each of the different rates that were in effect in Oldham County.

ANSWER: See answers to Question 3 above.

A. Previous to the implementation date of the new rates, list the name, fixed monthly cost or formula and number of residential customers for each of the different rates that were in effect in Oldham County.

| | | | |
|----------------|----------------------|------|-----------------------|
| ANSWER: | Glen Oaks/Moser Farm | 211 | 6.59 + 1.81/1000 gal. |
| | Goshen | 1701 | 6.25 + 2.36/1000 gal. |
| | Buckner | 35 | 8.42 + 2.73/1000 gal. |
| | Green Valley | 85 | 8.42 + 2.73/1000 gal. |
| | Lakewood Valley | 226 | 21.85 |
| | Covered Bridge | 324 | 40.06 |
| | Heather Hill | 160 | 26.05 |
| | Country Village | 138 | 26.10 |
| | Mockingbird Valley | 45 | 46.36 |
| | Ash Avenue | 953 | 16.31 |
| | Lockwood Estates | 64 | 33.61 |

Data Request No. 8. What is the current total amount of water used by residential customers in Oldham County for the previous year? What is the current total amount of sewage processed from residential customers in Oldham County for the previous year?

ANSWER: Objection; seeks information irrelevant to this proceeding. Without waiving its objection, OCSD advises that current total water use for all residential customers is about 31.3 million gallons annually. Sewage has not been continually metered and total volume for last year is unknown.

A. If the amount of sewage treated is less than the amount of water used, what type of adjustments does OCSD plan to make to residential customer bills? Explain in detail.

ANSWER: See response below.

B. Activities like filling pools, washing cars, watering lawns and watering for drought conditions would increase water usage but not sewage processing costs. Would OCSD agree as a condition of PSC approval of the acquisition of the plants a 15% reduction in the gallons of water used per month in calculating the sewage charge? Explain your response in detail.

ANSWER: OCSD is preparing a policy to address irrigation/pool adjustments.

Data Request No. 9. Provide any maps that would detail the probability of drought conditions in the Oldham County area.

ANSWER: OCSD has no such data available.

Data Request No. 10. What are the number of Orchard Grass residential customers that are in Oldham County? What are the number of Orchard Grass residential customers that are in Jefferson County?

ANSWER: There are approximately 710 customers, all in Oldham County.

A. Provide a list of the name and address (including zip code) of the residential customers of the Orchard Grass plant.

ANSWER: Objection; OCSD does not have this information and it is irrelevant to this proceeding.

B. Provide a list of the name and address (including zip code) of the Willow Creek Plant.

ANSWER: Objection; OCSD does not have this information and it is irrelevant to this proceeding.

Data Request No. 11. What are the number of Willow Creek residential customers that are in Oldham County? What are the number of Willow Creek residential customers that are in Jefferson County?

ANSWER: There are approximately 338 customers, 125 of which live in Jefferson County.

Data Request No. 12. Provide maps and aerial photos that show the location of Willow Creek and Orchard Grass, including the plant locations with the county line delineated.

ANSWER: See attached.

A. If there is a dispute as to the actual location of the county line describe the various lines and where the de facto line is. Provide a map showing the line(s) through the Willow Creek and Orchard Grass area.

ANSWER: N/A.

Data Request No. 13. Would OCSD agree that Oldham County Ordinance No. 96-830-26 (JA

Exhibit D) does not authorize transfer of Jefferson County residential customers to the OCSD?
Explain your response in detail.

ANSWER: The County Ordinance establishes OCSD with all powers and authority under KRS Chapter 220, which includes the statutory ability to serve customers outside the county.

A. Does Jefferson County Fiscal Court have an ordinance concerning a sewage district?

ANSWER: Unknown.

B. In accordance with KRS 220.035(2) and KRS 220.135(1) has Oldham County and Jefferson County adopted conforming ordinances on the exercise of the OCSD in Jefferson County? If yes, provide copies of the Jefferson County ordinance with signature(s) of Jefferson County officials.

ANSWER: OCSD is not a multi-county district; neither statute applies.

Data Request No. 14. Has OCSD published public notice in any newspapers of the proposed acquisition of the Willow Creek and Orchard Grass plants?

ANSWER: No.

A. If yes, provide the names and dates of newspaper notice, a copy of the notice and copies of the bill from the newspapers.

ANSWER: N/A.

Data Request No. 15. Does OCSD plan to implement any other taxes or fees to residential sewage customers in the next five years?

A. If yes, provide the description of the type of taxes or fees per month or the formula and estimated costs per month per residential customer.

ANSWER: Objection; not relevant to this proceeding. Without waiving its objection, OCSD states that it is not a taxing district, however, it charges sewer rates, assessments, connection fees, and such other fees as may be appropriate.

B. Would the OCSD agree to not implement any new taxes or fees to Willow Creek or Orchard Grass residential sewage customers for a period of three years as a condition of PSC

approval? Explain your response.

ANSWER: OCSD will continue to charge Orchard Grass and Willow Creek customers the same rate as all other customers as required by law.

C. Does OCSD charge sales tax on sewage bills? Explain the answer.

ANSWER: Only for commercial customers.

Data Request No. 16. In accordance with KRS 220.135(6)(d):

A. Does OCSD consider the transfer of function of the Willow Creek and or Orchard Grass sewage treatment from package plants to central treatment facilities to be economically feasible? Explain your response in detail.

ANSWER: Acquiring Orchard Grass and Willow Creek will permit improved planning within the OCSD service area and allow regionalization of sewer facilities, which will reduce the number of package treatment plants and in turn reduce operating costs, while improving water quality throughout the County.

B. Would the statute allow OCSD to charge uniform rates to customers that were served by the same central treatment facility? For example if OCSD had 3 central treatment facilities would the statute allow 3 different rates that were uniform for all the residential customers for each facility? Explain all responses.

ANSWER: Objection; calls for a determination of law, not a statement of fact.

C. If the statute requires uniform rates, is it possible to have a different rate for a residential, commercial and industrial customer? Explain the response.

ANSWER: Objection; calls for a determination of law, not a statement of fact.

Data Request No. 17. In accordance with KRS 220.135(7)(b) would OCSD agree that the District does not have jurisdiction for the establishment of uniform rates outside of Jefferson County? Explain your response in detail.

ANSWER: Objection; the question is confusing and calls for a determination of law, not a statement of fact. Without waiving its objection, OCSD states that it has the authority to set rates

for customers served in Jefferson County.

Data Request No. 18. Is the Willow Creek plant located in Oldham or Jefferson County or both? Provide documentation to prove the county location. Provide a copy of most recent property tax bill.

ANSWER: The Willow Creek plant is located in Oldham County. OCSD does not have tax bills for the plant property.

Data Request No. 19. Is the Orchard Grass Plan located in Oldham or Jefferson County or both? Provide documentation to prove the county location. Provide a copy of most recent property tax bill.

ANSWER: The Orchard Grass plant is located in Oldham County. OCSD does not have tax bills for the plant property.

Data Request No. 20. Provide copies of any letters or e-mails received from residential customers concerning the change of sewage rates since 01 Sep 2003 to the present whether they were in favor of it or opposed to it.

ANSWER: Objection; this information is not relevant to Orchard Grass or Willow Creek since neither plant was included in the rate determination. Without waiving its objection, OCSD states that all correspondence received from residential customers was in favor of the new rate structure.

Data Request No. 21. In accordance with KRS 278.218 (2) describe in detail how the proposed transfer of the plants is for a proper purpose and consistent with the public interest.

ANSWER: Placing Orchard Grass and Willow Creek under government ownership will permit improved planning within the OCSD service area and permit regionalization of sewer facilities, which will reduce the number of package treatment plants and in turn reduce operating costs, while improving water quality throughout the County.

Data Request No. 22. Reference JA Page 49, overview, which states: It is intended that OCSD....benefit the customer, community and environment.

A. Considering separately the customer, the community and the environment describe in the detail the benefit to each category. Explain in detail.

ANSWER: See answer to Question 21 above.

Data Request No. 23. There was a recent court case between the PSC and the OCSD and or Oldham County Fiscal Court concerning who had the authority to set and control sewage rates? Provide the case number and a copy of the decision of the Kentucky Court of Appeals.

ANSWER: See attached.

Data Request No. 24. Provide the average amount of water used in a month for an Orchard Grass residential sewage customer. Provide the data down to the 10 gallon value. Example 4.23 thousand gallons. Provide worksheet and calculations.

ANSWER: OCSD does not have this information, but estimates usage at 6.5 thousand gallons.

A. Provide the average amount of sewage treated in a month for an Orchard Grass residential sewage customer. Provide the data down to the 10 gallon value. Example: 4.23 thousand gallons. Provide worksheet and calculations.

ANSWER: OCSD does not have this information, but estimates flow at 6.5 thousand gallons.

Data Request No. 25. Provide the average amount of water used in a month for an Willow Creek residential sewage customer. Provide the data down to the 10 gallon value. Example 4.23 thousand gallons. Provide worksheet and calculations.

ANSWER: OCSD does not have this information, but estimates usage at 5.2 thousand gallons.

A. Provide the average amount of sewage treated in a month for a Willow Creek residential sewage customer. Provide the data down to the 10 gallon value. Example: 4.23 thousand gallons. Provide worksheet and calculations.

ANSWER: OCSD does not have this information, but estimates flow at 5.2 thousand gallons.

Data Request No. 26. Provide the sewage rates charged to commercial and industrial customers

in the OCSD. Provide the fixed monthly rates or formula and describe to who it applies.

ANSWER: See attached.

Data Request No. 27. Reference the joint application, Page 15, Article III, purchase price. How was the value of the \$675,000 determined. Explain in detail provide documentation of any valuation or estimate of equipment and land.

ANSWER: Price was determined in an arms-length negotiation, based upon estimated values of property, customers, capacity, and value to the community and the District. See also Response to Data Request No. 9 to the Commission Staff.

Data Request No. 28. Provide the names and annual salaries of the members of Oldham County Fiscal Court.

ANSWER: Objection; irrelevant and unknown.

A. For the past five calendar or fiscal years provide the dollar amount of the annual budget of the Oldham Fiscal Court. Provide the source and dollar amount of each of the major components of the Fiscal Court budget. Consider the sewage chargers to customers as a revenue source.

ANSWER: Objection; irrelevant and unknown.

Data Request No. 29. Reference Rash Letter (Madison enclosure 2) which states: Anyone who does not like their bill has the ability to lower it through less usage.

A. What would the OCSD suggest for customers to lower their water usage? Explain in detail.

ANSWER: There are common methods of water conservation which customers can utilize depending on their particular circumstances. Additional information can be obtained from the Louisville Water Company, and perhaps from Mr. Rash.

Data Request No. 30. Reference the joint applicants letter dated 18 Feb 2004 opposing my intervention in this case:

A. On page 2 it states: Since the early 1970's when the Willow Creek system was built,

the regulation and administration of this system has been performed by... Oldham County. Describe in detail the activities of Oldham County.

ANSWER: The reference is to inspection and regulation by the Oldham County Health Department. Those activities are unknown.

B. On Page 3 it states: The OCSD , at the request and urging of the Kentucky Division of Water has taken steps to purchase the small waste water treatment system.

Provide documentation from Kentucky Division of Water.

ANSWER: See attached statement from the 1998 Oldham County Action Plan.

C. On Page 3 it states: OCSD's ownership and operation...will result in an improvement of the waste water generated by Willow Creek residents, as well as an improvement in the water quality of streams flowing through Oldham County.

1. Describe in detail how this will be accomplished.

ANSWER: Elimination of the Willow Creek plant, and regionalization of facilities, will improve stream water quality by eliminating additional point source discharges.

2. Since the current Orchard Grass and Willow Creek Plants are meeting all state requirement why is this transfer necessary? Describe the benefit.

ANSWER: See answer to Question 21 above.

Data Request No. 31. Provide the monthly sewage dollar charge to a Orchard Grass residential customer who uses an average amount of water under the current sewage rates approved by Oldham Fiscal Court. Provide the percentage change in said charge compared to the current Orchard Grass charge. Calculate compared to the current Orchard Grass charge. Calculate the percentage out to the 100 hundredth, for example: 4.32%

ANSWER: \$28.47 v. \$15.59 or 82.62% increase.

Data Request No. 32. Provide the monthly sewage dollar charge to a Willow Creek residential customer who uses an average amount of water under the current sewage rates approved by Oldham Fiscal Court. Provide the percentage change in said charge compared to the current

Willow Creek charge. Calculate the percentage out to the 100 hundredth, for example: 4.32%

ANSWER: \$24.31 v. \$18.45 or 31.76% increase.

Data Request No. 33. Reference Rash Letter (enclosure 2) which declares:

It has also received \$300,000 year -to-date in TAP - On fees.

Describe what a TAP on fee is. Who does the fee apply to, all OCSD customers, new homes, etc.?

ANSWER: Objection; this information is not relevant to this proceeding. Without waiving its objection, OCSD has attached its Connection Fee Policy.

What is the charge per OCSD customer for a TAP On fee?

ANSWER: See above.

Will each residential customer of Willow Creek and Orchard Grass be paying this TAP On fee if the transfer is approved by the PSC? Explain the answer.

ANSWER: No; see above.

Would OCSD commit as a condition of PSC approval of the transfer of the Plants, not to charge, in any way, a TAP ON fee to residential sewage customer of Orchard Grass and Willow Creek? Explain your answer.

ANSWER: See above.

E. Reference Madison enclosure 3, Page 2 of 2. If the OCSD connection fee is not equivalent to the MSD fee of \$5,500, does this explain why the OCSD fee for an average customer is much higher than MSD's of \$13.18 fixed (bi-monthly) plus \$1.81 for 1,000 gallons? (Madison enclosure 3 pate 1 of 2) Explain the answer in detail.

ANSWER: See above.

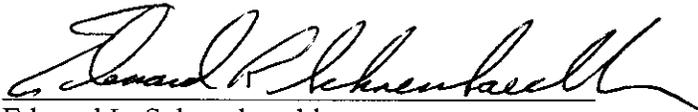
Respectfully submitted,



Edward L. Schoenbaechler
HALL, RENDER, KILLIAN, HEATH & LYMAN, P.S.C.
KHA Building, Suite 102
2501 Nelson Miller Parkway
Louisville, KY 40223
Counsel for Oldham County Sewer District

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by first class mail, postage prepaid, on: Robert C. Moore, Hazelrigg & Cox, LLP, P. O. Box 676, 415 West Main Street, Frankfort, Kentucky 40602; Robert L. Madison, 5407 Baywood Drive, Louisville, Kentucky 40241-1318; and David Edward Spenard, Assistant Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204, on this the 8th day of March 2004.



Edward L. Schoenbaechler

Connection Fee

A Connection Fee is applicable for the first connection to property that has not been previously assessed or otherwise charged or credited for the cost of the sewer serving the property. The Connection Fee shall be \$1415.00 for a 6-inch or smaller diameter connection; for connections larger than 6-inches, the Connection Fee shall be increased in proportion to the increased capacity of the larger connection over the capacity of the 6-inch connection.

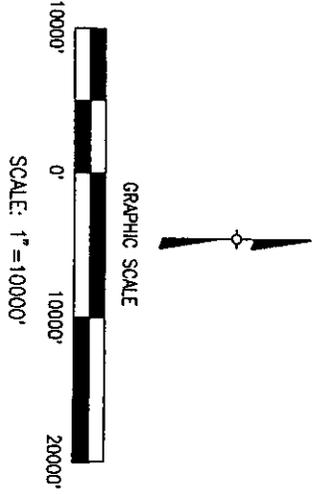
With payment of a Connection Fee, OCSD will, at its expense, install one property service connection from the sewer to the easement or property line. Any additional connections to a property that paid a Connection Fee shall be installed at the owner's expense. In the event of subsequent subdivision, each additional parcel served by the existing sewer shall be required to pay a Connection Fee.

If the property has been previously assessed or otherwise charged or credited for the cost of a sewer but not for the cost of a property service connection, the Connection Fee shall not be applicable, but the owner shall pay the actual cost of the one connection.

Approved: February 5, 2001

EX111-1
01-06-98

OLDHAM COUNTY ACTION PLAN



- LEGEND**
- EXISTING COUNTY BOUNDARY
 - EXISTING ROADWAY
 - EXISTING STREAMS
 - EXISTING WWTTP
 - SERVICE AREA



 **OLDHAM COUNTY**
SANITATION DISTRICT

 **MSD**
MIDDLESEX SANITATION DISTRICT

RENDERED: July 12, 2002; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001482-MR

OLDHAM COUNTY SANITATION DISTRICT

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER L. CRITTENDEN, JUDGE
ACTION NO. 00-CI-00480

KENTUCKY PUBLIC SERVICE COMMISSION

APPELLEE

OPINION

REVERSING AND REMANDING

** ** * * *

BEFORE: BUCKINGHAM, KNOFF, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: The Oldham County Fiscal Court (Fiscal Court) established an independent sanitation district by authority of KRS 67.715(2), to be governed by KRS Chapter 220, which authorizes the creation and regulation of special sanitation districts. The Public Service Commission (PSC) contends it has jurisdiction over the district because it was not created by KRS Chapter 220. The district counters that it is governed by said

statutes, and therefore exempt from PSC regulation. We opine that KRS 67.715(2) authorizes an alternative method of creating sanitation districts and the real issue is whether the sanitation district is governed by KRS Chapter 220. If governed by KRS Chapter 220, it is exempt from PSC regulation. We therefore reverse and remand.

On December 3, 1996, the Fiscal Court established the Oldham County Sanitation District (OCSD), whose territory includes all of Oldham County, except the cities of LaGrange and Crestwood. The ordinance creating the special district declared that the OCSD shall be governed by KRS Chapter 220.

KRS 220.020 gives the Secretary of the Natural Resources and Environmental Protection Cabinet the position of Commissioner of Sanitation to establish sanitation districts when the County Board of Health certifies the need for a sanitation district to the Commissioner. KRS 220.040 sets forth the prerequisites necessary for the Board of Health to certify a need. If no suit is filed, or one is filed and a final judgment entered in favor of a district, the sanitation district then becomes a political subdivision with perpetual existence.

In the case sub judice, the Fiscal Court took the initiative to create a sanitation district by authority of KRS 67.715(2) which allows fiscal courts to create special

districts.¹ The Fiscal Court's intention here was clearly to start up a sanitation district, and once created, subject it to the requirements and regulations of sanitation districts created under authority of KRS Chapter 220.²

One of the OCSD's first orders of business was to purchase a private sanitation district (Covered Bridge) and absorb it into the OCSD. Now private sanitation districts are considered utilities subject to the rules and regulations of the Public Service Commission (PSC) under KRS 278.010(3)(f). Under that statute, a utility is defined as:

any person except . . . a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with:

(f) The collection, transmission, or treatment of sewage for the public, for compensation, if the facility is a subdivision collection, transmission, or treatment facility plant that is affixed to real property and is located in a county containing a city of the first class or is a sewage collection, transmission, or treatment facility that is affixed to real property, that is located in any other county, and that

¹KRS 65.160 allows two or more counties to form special districts for any purpose an individual county can perform.

²See Oldham County Ordinance No. 96-830-26, wherein Fiscal Court states: "The Oldham County Sanitation District shall be created and formed so that it shall have all powers and duties to reasonably, necessarily and effectively implement the provisions of and carry out the duties prescribed by KRS Chapter 220. The District shall be structured consistent with the provisions of KRS Chapter 220."

is not subject to regulation by a
metropolitan sewer district or any sanitation
district created pursuant to KRS Chapter 220;
. . . .

The PSC approved the sale of Covered Bridge to the OCSD but went on to inform the OCSD that since it was not created pursuant to KRS Chapter 220, it would be subject to the PSC jurisdiction. The OCSD acknowledges it was not created by Chapter 220 of the Kentucky Revised Statutes but contends that after creation it was made subject to and transformed into a KRS Chapter 220 sanitation district. The circuit court assessed the issue as being whether the OCSD is a KRS Chapter 220 sanitation district which is outside the PSC's jurisdiction or a utility subject to the PSC's jurisdiction or regulatory oversight. The circuit court concluded that only sanitation districts created pursuant to KRS Chapter 220 are exempt from PSC regulation, but not those sanitation districts made subject to the regulations, etc. in KRS Chapter 220.

The OCSD has appealed to our Court contending that regardless of the way it was created, the OCSD is a sanitation district regulated and controlled by KRS Chapter 220. Therefore, it should be exempt from PSC regulation. KRS 67.715(2) does not authorize the Fiscal Court to create any special district. The first question is whether KRS 67.715(2) creates an alternative

method to KRS 220.010 through KRS 220.110. This is an issue of law, not fact, so the standard of review is de novo. Aubrey v. Office of the Attorney General, Ky. App., 994 S.W.2d 516 (1998); Mill Street Church of Christ v. Hogan, Ky. App., 785 S.W.2d 263 (1990).

We begin our analysis with a review of KRS 278.010(3) which defines which utility companies are subject to PSC regulation. Currently, the definition of a utility excludes "a city who owns, controls, operates, or manages . . ." a sanitation district; sanitation districts regulated by a metropolitan sewer district, "or any sanitation district created pursuant to KRS Chapter 220." The Supreme Court in Boone County Water and Sewer District v. Public Service Commission, Ky., 949 S.W.2d 588 (1997), dealt with a sanitation district and an earlier version of KRS 278.010(3) which excluded city-owned sanitation districts as well as those "regulated by a metropolitan sewer district." Included in the earlier version were sanitation districts which treated sewage. The Court had a district before it that only collected, but did not treat sewage. The Court found two reasons for excluding the sanitation district from PSC jurisdiction: first, the collection was omitted from inclusion; and collection was included "by precise placement in another chapter of the Kentucky Revised Statutes." Id. at 591. A sanitation district

created under KRS Chapter 220, which authorizes and regulates special sanitation districts, was the only special sanitation district other than metropolitan sewer districts, sewer construction districts, and sanitation tax districts, created under Chapter 76, in effect at the time the Court decided the Boone County Water case in 1997. Also, the Boone County Water and Sewer District (Boone) was "a non-profit public utility which operates a water district and several small sewage treatment facilities." Id. at 589. "Boone also operates a sewage collection system pursuant to a contract with Sanitation District No. 1 of Campbell and Kenton Counties." Id. Obviously the combined water and sanitation district of Boone County was not a KRS Chapter 220 sanitation district, yet the Supreme Court was saying it was subject to KRS Chapter 220.

After the Boone County Water decision, the General Assembly amended KRS 278.010(3)(f) so that not only city sanitation districts and sanitation districts subject to regulation by a metropolitan sewer district were exempt from PSC regulation, but also exempted "any sanitation district created pursuant to KRS Chapter 220."³ This is close but not exactly what the Court said. The Court was saying special sanitation

³(SB 110, Chapter 118, Section 1, effective July 14, 2000.)

districts were governed by KRS Chapter 220, whereas the General Assembly said those "created" by said chapter. Those created include those regulated by said chapter but not all those regulated by were also created by said chapter. Therefore, the amendment is not as inclusive as the court decision, nor was the amendment an attempt to limit the scope of the Boone County Water case. Our interpretation of the amendment as an oversight in wording is more logical or consistent with the rest of the statute which speaks in terms of being regulated by a city or metropolitan sewer district, rather than being concerned with the method of creation.

For the foregoing reasons, the judgment of the Franklin Circuit Court is reversed and remanded.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR
APPELLANT:

Edward L. Schoenbaechler
Louisville, Kentucky

BRIEF FOR APPELLEE:

Deborah T. Eversole
Gerald E. Wuetcher
Frankfort, Kentucky

ORAL ARGUMENT FOR APPELLEE:

Gerald E. Wuetcher
Frankfort, Kentucky

Oldham County Sewer District Resolution on Sewer Service Rates

WHEREAS, the Oldham County Sewer District (“OCSD”) is required by KRS 220.135 to “establish uniform rates for sewer services throughout its jurisdiction, and district rates shall vary only on the basis of consumption;” and

WHEREAS, OCSD has studied its costs and revenues for the purposes of establishing a service rate sufficient to meet its obligation to serve the citizens of Oldham County in a fiscally sound manner; and

WHEREAS, OCSD has held a special public meeting for the purpose of considering alternative methods of establishing such service rates; and

WHEREAS, the Resolution of the OCSD Board of Directors dated January 5, 2004, was reviewed and amended by the Oldham County Fiscal Court on January 6, 2004.

THEREFORE, BE IT RESOLVED by the Board of Directors of the Oldham County Sewer District as follows:

1. Sewer service rates for all residential customers within the OCSD service area shall be \$7.67 per month, plus \$3.20 per 1000 gallons of water usage per month.
2. Monthly service rates for Public and Institutional customers shall be based upon water meter size as follows:

| | |
|----------------|---------------------------------------|
| 5/8 & 3/4 inch | \$23.52 plus \$1.54 per 1000 gallons |
| 1 inch | \$31.28 plus \$1.54 per 1000 gallons |
| 1 1/2 inch | \$47.04 plus \$1.54 per 1000 gallons |
| 2 inch | \$62.80 plus \$1.54 per 1000 gallons |
| 3 inch | \$94.08 plus \$1.54 per 1000 gallons |
| 4 inch | \$126.54 plus \$1.54 per 1000 gallons |

3. Monthly service rates for Commercial and Industrial customers shall be based upon water meter size as follows:

| | |
|----------------|---------------------------------------|
| 5/8 & 3/4 inch | \$23.52 plus \$3.00 per 1000 gallons |
| 1 inch | \$31.28 plus \$3.00 per 1000 gallons |
| 1 1/2 inch | \$47.04 plus \$3.00 per 1000 gallons |
| 2 inch | \$62.80 plus \$3.00 per 1000 gallons |
| 3 inch | \$94.08 plus \$3.00 per 1000 gallons |
| 4 inch | \$126.54 plus \$3.00 per 1000 gallons |

4. The Board shall review service rates on a regular basis, and shall establish a policy for swimming pools, irrigation, and other water uses that do not discharge into District sewers.
5. This Resolution shall take effect on February 1, 2004, subject to review by the Oldham Fiscal Court pursuant to KRS 220.035 and Ordinance No. 96-830-26.

Adopted by unanimous vote of the Board of Director of the Oldham County Sewer District the 12th day of January, 2004.

Attest:

John Malueg, Secretary

Forrest B. Ewen, President

CHAPTER I

INTRODUCTION

A. OBJECTIVES

For several years, there have been continuing requests by developers, small cities, county government and others to have regional sewer service within Oldham County. In addition, the Kentucky Department for Natural Resources and Environmental Protection Cabinet, Division of Water, (DOW) has developed a policy to regionalize wastewater treatment facilities. DOW recognizes a need to eliminate small package sewage plants in the County, which continue to deteriorate water quality of streams. Previous facility plans such as the one prepared for Oldham County Water District No. 1 covering the Crestwood area of the County have shown a need for regional wastewater treatment, and recommended cost effective solutions.

In response to the regional approach for sewer service, an interlocal agreement was developed by Oldham County Fiscal Court and the Louisville and Jefferson County Metropolitan Sewer District (MSD). The primary purpose of the MSD/Oldham County interlocal agreement was to provide sanitary sewer service to GlenOaks, a residential development and golf course located in both Jefferson and Oldham Counties. The agreement also authorized a study to define potential regional, sewer service areas in Oldham County. MSD and Oldham County agreed to jointly manage this study, the Oldham County Action Plan, in order to produce a well-balanced wastewater management alternative that addressed regional wastewater disposal needs. The objectives of this chapter are to:

- Define the purpose and scope of the Oldham County Action Plan.
- Review previous planning efforts and the current planning process to obtain wastewater treatment for developed areas of Oldham County.
- Recognize resources utilized in completing the Oldham County Action Plan, including current Interlocal Agreements between MSD and Oldham County Fiscal Court and the City of Crestwood.

B. PURPOSE AND SCOPE

Oldham County is located adjacent to and northeast of Jefferson County. This location has been the primary stimulus for the tremendous growth experienced in Oldham County over the past twenty years. While this growth has positive aspects, such as low unemployment and a higher than average per capita income, it also has negative aspects, namely taxing infrastructure and increasing pollution.